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REID'S ADM'R *v.* WINDSOR et al.

Jan. 26, 1911.

[69 S. E. 1101.]

1. Executors and Administrators (§ 256*)—Actions of Administrator—Appeal—Decrees Appealable.—The fact, that, after a commissioner's report of liabilities of the estate, allowing defendant's claim, was filed in an action for administration, other creditors filed petitions asserting claims against the estate, would not prevent the administrator from then appealing from a decree confirming the report filed.

[Ed. Note.—For other cases, see Executors and Administrators, Dec. Dig. § 256.* 1 Va.-W. Va. Enc. Dig. 438.]

2. Executors and Administrators (§ 415*)—Insolvent Estates—Claims against Estate.—The fact that an estate is insufficient to pay all creditors in full does not prevent the administrator from defending claims for which he believes the estate is not liable.

[Ed. Note.—For other cases, see Executors and Administrators, Dec. Dig. § 415.* 5 Va.-W. Va. Enc. Dig. 575.]

3. Executors and Administrators (§ 247*)—Claims—Hearing by Commissioners—Exceptions—Sufficiency.—While exceptions to a commissioner's report are in the nature of special demurrers and must specifically point out the errors complained of, an exception to a commissioner's report allowing claims against an estate, that "the within report is excepted to because the commissioner allows the claim of M., based on a note for" a certain sum, "and purporting to be signed by said M." and another, sufficiently raised the question of the validity of M.'s debt.

[Ed. Note.—For other cases, see Executors and Administrators, Dec. Dig. § 247.* 11 Va.-W. Va. Enc. Dig. 742.]

4. Bills and Notes (§ 179*)—Validity—Note Payable to Maker.—While a note payable to the maker, or to himself or order, is not a valid legal contract until after indorsement, when it becomes payable to the indorsee, it is a valid, legal obligation in the hands of an indorsee, permitting him to sue thereon.

[Ed. Note.—For other cases, see Bills and Notes, Cent. Dig. § 428; Dec. Dig. § 179.* 2 Va.-W. Va. Enc. Dig. 427.]

5. Bills and Notes (§ 433*)—Right of Action.—The rule that a legal action cannot be maintained upon a note payable to the maker and others, while it is held by such others, goes to the remedy and not to the right, and does not prevent a suit in equity.

[Ed. Note.—For other cases, see Bills and Notes, Cent. Dig. §§ 1377-1423; Dec. Dig. § 443.* 10 Va.-W. Va. Enc. Dig. 735; 2 id. 483.]

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

6. Bills and Notes (§ 518*)—Negotiable Instruments—Consideration.—Under the direct provisions of Code 1904, § 2841a, cl. 24, a negotiable instrument is *prima facie* issued for a valuable consideration.

[Ed. Note.—For other cases, see Bills and Notes, Cent. Dig. §§ 1816-1821; Dec. Dig. § 518.* 2 Va.-W. Va. Enc. Dig. 415.]

7. Executors and Administrators (§ 256*)—Disputed Claims—Admission of Evidence—Necessity of Objections.—Where no objection was made to the insufficiency of evidence to establish a claim against an estate when it was offered before the commissioner, and none was made in the trial court, the question cannot be first raised on appeal.

[Ed. Note.—For other cases, see Executors and Administrators, Dec. Dig. § 256.* 1 Va.-W. Va. Enc. Dig. 561.]

Appeal from Circuit Court, Prince William County.

Administration suit by Reid's administrator against Fannie A. Windsor and others. From a decree confirming the Commissioner's report establishing a claim, the administrator appeals. Affirmed.

Thos. H. Lion and C. E. Nicol, for appellant.

R. A. Hutchison, for appellees.

JOHNSON *v.* COMMONWEALTH.

Jan. 26, 1911.

[69 S. E. 1104.]

1. Homicide (§ 135*)—Indictment—Sufficiency.—Under Code 1904, §§ 3999, 4000, providing that no indictment shall be quashed for enumerated defects, and that a judgment after verdict shall not be arrested or reversed on exceptions to the indictment if the offense be charged therein with sufficient certainty for judgment to be given thereon, an indictment for murder of a child seven years old, which alleges that accused struck, kicked, and beat decedent, on the stomach and back, and that he struck, pushed, or knocked decedent down on the floor, and that while lying on the floor he struck her on the stomach, back, legs, and hands, inflicting mortal wounds, sufficiently states the means whereby the life of decedent was extinguished.

[Ed. Note.—For other cases, see Homicide, Cent. Dig. §§ 215-223; Dec. Dig. § 135.* 7 Va.-W. Va. Enc. Dig. 130, et seq.]

2. Criminal Law (§ 700*)—Trial—Opening Statement of Prosecuting Attorney—Necessity.—Code 1904, § 4029a, authorizing counsel for the commonwealth and accused to make an opening statement of the case, confers the right to make an opening statement, but

*For other cases see same topic and section. NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.